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March 7, 2014

VIA MESSENGER

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 6772

Dear Mr. Jordan:

We write as counsel to Obama for America (the "Committee") and Martin Nesbitt, in his official capacity as Treasurer, Robert Roche, Wicked Global, and Derek Dorr, (collectively, "Respondents") in response to the complaint filed by Peter Schweizer on January 8, 2014 (the "Complaint").

The Complaint incorrectly alleges that Mr. Roche and the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act") by knowingly making and accepting an excessive in-kind contribution. They did not. Mr. Roche, as an uncompensated volunteer for the Committee, utilized a website he personally owned to direct visitors to the Committee's website. Federal Election Commission ("FEC" or the "Commission") regulations clearly state that such activity does not result in a contribution to the Committee.

Additionally, the Complaint incorrectly alleges that Respondents knowingly solicited, accepted, or received prohibited contributions from foreign nationals. They did not. Respondents acted in full compliance with the requirements of the Commission regarding the solicitation and acceptance of contributions at all times. Moreover, the Complaint presents no evidence to suggest Respondents knowingly solicited, accepted, or received such prohibited contributions. The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(d).

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Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

Ultimately, the Complaint presents allegations similar to those previously made against the Committee during both the 2012 and 2008 election cycles. *See* MUR 6687; *see also* MURs 6078/6090/6108/6139/6142/6214. In each case, and most recently in July 2013, the Commission properly dismissed the allegations, finding that the Committee's comprehensive vetting and compliance procedures were sufficient and effective in ensuring that the Committee did not knowingly solicit, accept or receive contributions from foreign nationals. The Complaint makes the same false assertions as presented in the complaints that the FEC has already dismissed, without offering any new material facts. Accordingly, the Commission should expeditiously arrive at the same decision that it has repeatedly arrived at before, once again finding no reason to believe that Respondents violated the Act, and dismiss this matter.

**I. Robert Roche did not make, and the Committee did not accept, an excessive in-kind contribution.**

Commission regulations provide that the costs associated with an "individual or a group of individuals ... engag[ing] in Internet activities for the purpose of influencing a Federal election" are generally not "contributions" or "expenditures." *See* 11 C.F.R. §§ 100.94, 100.155. By definition, this exception includes "providing a hyperlink or other direct access to another person's website" and "creating, maintaining, or hosting a website." *See id.* §§ 100.94(b), 100.155(b). "Equipment and services" is defined to include "Internet domain names" and "Internet Service Providers (ISP)." *Id.* §§ 100.94(c), 100.155(c).

For an individual to qualify for this exemption, he or she must be "engage[d] in Internet activities" without compensation from a candidate, political party, or political committee. *Id.*; *see also* 71 Fed. Reg. 18,589, 18,604 (Apr. 12, 2006) (Explanation and Justification for Rule on Internet Communications). The exemption applies regardless of whether the individual acts independently or in coordination with a candidate. *Id.*

As the Complaint itself notes, Robert Roche was the owner of the Internet domain name "Obama.com" during the 2012 election cycle.<sup>1</sup> Mr. Roche made the decision that throughout the 2012 election cycle any visitors to Obama.com would be automatically directed to a donation webpage of the Committee. Mr. Roche was a volunteer supporter of the Committee, and was a member of the National Finance Committee who helped to raise funds for the Committee. He was not at any time an employee or paid consultant of the Committee, and any activities that he engaged in on behalf of the Committee were done without compensation.

<sup>1</sup> Wicked Global, and Derek Dorr as its founder, were named in the Complaint solely because they provided minimal administrative hosting services for Obama.com.

measures for online contributions because neither the Act nor Commission regulations require such measures." See FEC Factual and Legal Analysis, MUR 6687 at 9-10.

The Committee's vetting and compliance procedures were entirely consistent with those recommended and approved by the Commission, and the Commission previously found that they were also effective. See *id.* at 7. First, the Committee's online fundraising and landing page required that any donor affirm that the funds being contributed were lawful and consistent with the Act's requirements when clicking the "donate" button to make a contribution. See FEC Advisory Op. 2011-13 (DSCC). This included an affirmation that the donor was a United States citizen or a lawfully admitted permanent resident of the United States.

Second, again consistent with the Act and Commission regulations, all donors were required to enter their full names, addresses, occupations and employers. See 11 C.F.R. §§ 100.12, 104.39(a)(4). If the donor did not provide any of the required information, the committee's website prompted the donor to provide the required information before making the contribution.

The Committee similarly took specific and significant steps to protect against the knowing solicitation, acceptance, or receipt of any contributions from foreign nationals. See 11 C.F.R. § 110.20(g). As described above, all donors who contributed online were required to affirm that they were either a United States citizen or a lawfully admitted permanent resident of the United States. A separate webpage was created for donors living abroad, which required them to enter a valid U.S. passport number before making a contribution. The Committee then followed up with any donor that provided a foreign address to request a copy of their U.S. passport and engaged in a careful screening process to vet and examine each donor to confirm the validity of the contribution.

Individuals who made contributions in person at events held outside the United States were separately required to provide a copy of a valid U.S. passport and submit a contribution form confirming that they were a United States citizen or a lawfully admitted permanent resident of the United States. Whether the contribution was made online or in person, the Committee promptly refunded the contribution of any donor living abroad who did not provide a copy of a valid U.S. passport. Similar documentation was required for donors who were lawfully admitted permanent residents of the United States.

The Committee's compliance and vetting procedures included an extensive back-end process to enable it to identify and refund any fraudulent or otherwise unlawful contributions. Throughout the campaign, the Committee continuously adjusted its compliance and vetting procedures to adapt to increases in the nature and volume of contributions. At regular intervals, the Committee conducted automated searches of its donor database—including all contributions, whether raised online or not—to identify any fraudulent or unlawful donations. This included automated searches of its donor database to identify contributions with foreign city or country names, postal codes other than valid U.S. zip codes, non-U.S. email addresses, and passport numbers that did

not conform to standard U.S. passport numbers. Additionally, the Committee screened all online credit card contributions that originated from a foreign IP address, and if any question arose regarding the donor's citizenship, the Committee required that the donor provide a copy of a valid U.S. passport. Again, the Committee promptly refunded any contribution for which a valid U.S. passport could not be confirmed.

As the Commission itself has determined in each instance where these same issues have been raised, these procedures provided a level of security that was more than sufficient to meet the Committee's legal obligations.

**B. Obama.com was not used by Respondents as a means to knowingly solicit contributions from any foreign nationals.**

Obama.com was not used any differently than the Committee's webpage with regard to foreign nationals. As noted above, throughout the 2012 election cycle, any visitors to Obama.com were automatically directed to a donation webpage of the Committee. Accordingly, any visitor to Obama.com was ultimately subject to the compliance and vetting procedures described above.

**C. The Complaint does not present any evidence that Respondents knowingly solicited, accepted, or received contributions from any foreign nationals.**

Ultimately, the Complaint does not present any evidence that the Respondents ever knowingly solicited, accepted, or received contributions from any foreign nationals. There is no indication in the Complaint or elsewhere that the Respondents had "actual knowledge" that the source of any funds solicited, accepted, or received was a foreign national. *Id.* § 110.20(a)(4)(i). Nor were the Respondents "aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted, or received" was a foreign national. *Id.* § 100.20(a)(4)(ii). As described above, where the Committee was aware of facts that would lead a reasonable person to inquire as to the source and permissibility of the funds, the Committee conducted prompt and reasonable inquiries. *See id.* § 110.20(a)(4)(ii).

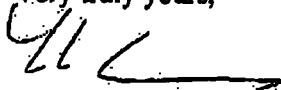
Further, the Complaint itself notes that it presents only "[c]ircumstantial evidence" that the Committee knowingly solicited, accepted, or received prohibited contributions from foreign nationals. The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. *See* 11 C.F.R. § 111.4(d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

Finally, without offering any new material facts, the Complaint makes substantially similar allegations to those presented in complaints that the FEC has already dismissed. For the

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foregoing reasons, Respondents respectfully request that the Commission find no reason to believe that they have violated the Act, and dismiss this matter expeditiously.

Very truly yours,



Robert F. Bauer  
Graham M. Wilson  
Danielle E. Friedman

Counsel to Respondents



FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

**STATEMENT OF DESIGNATION OF COUNSEL**  
**Please use one form for each Respondent/Client**  
**FAX (202) 219-3923**

MUR # 6772

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The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

3/2/2014

Date

*D. F. Don*  
Respondent/Client Signature

Title (Treasurer/Candidate/Owner)

RESPONDENT/CLIENT: Derek Derr and Wicked Global

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Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation.